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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,688

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Randall Coleman Gellens

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EXAMINER

TRAN, PHILIP B

ART UNIT

PAPER NUMBER

2155

NOTIFICATION DATE

DELIVERY MODE

04/30/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/727,688	Applicant(s) GELLENS ET AL.	
	Examiner Philip B. Tran	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Notice to Applicant

1. This communication is in response to amendment filed December 13, 2007.

Claims 1-35 have been canceled. 36-71 have been newly added. Therefore, claims 36-71 are pending for further examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 36-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin et al (Hereafter, Lewin), U.S. Pat. No. 7,010,578 in view of Williams, U.S. Pat. No. 6,957,269.

Regarding claim 36, Levin teaches a method for transferring data, comprising:

receiving one or more registrations, wherein each registration comprises a set of criteria for transferring data (= obtaining registrations with metrics for delivering of content) [see Col. 4, Line 8 to Col. 5, Line 30];

recognizing a communication link (= maintaining connection link between clients and servers) [see Figs. 1-4];

identifying selected registrations whose associated set of criteria has been met (= identifying the registrations with metrics matching for delivering of content) [see Figs. 2 & 3 and Col. 4, Line 8 to Col. 5, Line 30].

Lewin does not explicitly teach assigning priority indicators to the selected registrations (metric data) and initiating a transfer over the communication link to transfer data associated with the selected registrations (metric data) based on the priority indicators. However, Williams, in the same field of transferring data endeavor, discloses assigning priority indicators to the data frames and transmitting data frames based on priority indicators [see Abstract and Col. 2, Lines 1-26]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Williams into the teaching of Levin in order to efficiently perform priority-based flow control of data and thus the traffic congestion in the network can be under well control for increasing the network throughput.

Regarding claim 37, Levin further teaches the method of claim 36, wherein the set of criteria identifies at least one of an amount of data to be transferred, a type of data to be transferred, a type of communication link, the amount of data currently being sent over the communication link, an available data transfer rate, power consumption associated with transmitting the data, an amount of data packet re-transmissions per unit time, a battery power level, a user activity level, and a time of day indicator [see Col. 4, Line 8 to Col. 5, Line 30].

Regarding claim 38, Levin and Williams do not explicitly teach the method of claim 36, further comprising performing at least one of said receiving, recognizing, identifying, assigning, and initiating in a background mode. However, it would have been obvious to one skilled in the art to recognize that performing step in a background mode is known to efficiently avoid the latency of transferring data over the network and thus reducing the traffic congestion in the network.

Regarding claim 39, Levin further teaches the method of claim 36, further comprising performing the method on a device chosen from a group of devices comprising a personal laptop computer, a personal standup computer, a wireless communication device, a still camera, a video camera, an audio recording device and a PDA [see Fig. 1].

Regarding claim 40, Levin further teaches the method of claim 36, wherein the data represents at least one of keystroke information, files viewed, files created, websites visited, and software application usage [see Col. 4, Lines 27-56].

Regarding claim 41, Levin further teaches the method of claim 36, wherein the one or more registrations identify at least one of opportunistic data transfers and periodic data transfers [see Col. 5, Line 31 to Col. 6, Line 8].

Regarding claim 42, Levin further teaches the method of claim 36, wherein said recognizing comprises establishing the communication link if the communication link is not recognized within a selected time interval [see Figs. 1-4 and Col. 4, Line 8 to Col. 5, Line 30].

Regarding claim 43, Levin further teaches the method of claim 36, wherein the communication link is at least one of a traffic channel and a supplemental channel [see Figs. 1-4].

Regarding claim 44, Levin further teaches the method of claim 36, wherein the data comprises at least one of a notification request and a data exchange associated

with at least one of an email program, a stock quote utility, an MMS utility, an instant messaging client, networked games, a weather checker, a person locator, a location monitor, a news checker, and a medical reminder [see Col. 4, Lines 27-56].

Claim 45 is rejected under the same rationale set forth above to claim 36.

Claims 46-53 are rejected under the same rationale set forth above to claims 37-44.

Claim 54 is rejected under the same rationale set forth above to claim 36.

Claims 55-62 are rejected under the same rationale set forth above to claims 37-44.

Claim 63 is rejected under the same rationale set forth above to claim 36.

Claims 64-71 are rejected under the same rationale set forth above to claims 37-44.

Response to Arguments

4. Applicant's arguments with respect to claims 36-71 have been considered but are moot in view of the new ground(s) of rejection.

Other References Cited

5. The following references cited by the examiner but not relied upon are considered pertinent to applicant's disclosure.

A) Evans et al, U.S. Pat. No. 6,690,918.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR REPLY TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE MAILING DATE OF THIS ACTION. IN THE EVENT A FIRST REPLY IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CAR 1.136(A) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT, HOWEVER, WILL THE STATUTORY PERIOD FOR REPLY EXPIRE LATER THAN SIX MONTHS FROM THE MAILING DATE OF THIS FINAL ACTION.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tran whose telephone number is (571) 272-3991. The Group fax phone number is (571) 273-8300. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar, can be reached on (571) 272-4006.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip B Tran/
Primary Examiner, Art Unit 2155
April 24, 2008